

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LARRY REYNOLDS	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner	:	NO. 03-2397
of the Social Security Administration	:	

**MEMORANDUM**

**Baylson, J.**

**April 27, 2004**

**I. Introduction**

Plaintiff, Leroy Reynolds, sought judicial review of the decision of the Commissioner of the Social Security Administration denying his claim for supplemental security income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. § 1381-1383f. Magistrate Judge Charles B. Smith issued a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(c). After an independent and thorough consideration of the administrative record and all filings in this Court, this Court concluded that the Magistrate Judge’s R&R correctly evaluated the decision of the Administrative Law Judge (“ALJ”), and this Court affirmed the decision of the ALJ to uphold the Commissioner’s decision to reject Plaintiff’s claim for SSI benefits. See Reynolds v. Barnhart, 2004 WL 2102008 (E.D. Pa. Aug. 26, 2004).

Presently before the Court is Plaintiff’s motion to alter the judgment of the Court affirming the decision of the ALJ (Doc. No. 18). This motion was filed pursuant to Federal Rule of Civil Procedure 59(e). The Court ordered supplemental briefing on the motion, which was completed February 22, 2005 (See Doc. Nos. 21 and 22). Now, for the reasons set forth below, Plaintiff’s motion to alter judgment will be granted.

## **II. Legal Standard**

The standard for obtaining relief under Rule 59(e) is a difficult one to meet. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). Motions for re-argument or reconsideration may not be used “as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.” Brambles USA, Inc. v. Blocker, 735 F. Supp. 1239, 1240 (D. Del. 1990). However, re-argument may be appropriate where “the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” Id. at 1241 (internal quotations and citations omitted).

## **III. Contentions of the Parties**

### **A. Plaintiff’s Contentions**

Plaintiff’s motion to alter judgment is limited to a single, narrow issue. Plaintiff claims that the ALJ, the Magistrate, and subsequently this Court, erred as a matter of law in applying an incorrect version of a version of the “C” criteria under Listing of Impairment 12.03, “Schizophrenic, Paranoid and Other Psychotic Disorders.” See 20 C.F.R. 404, Subpart P, Appendix 1. Plaintiff’s application for benefits was filed on June 5, 2000 and Listing 12.03 was amended and effective September 20, 2000. Although Plaintiff’s claim was filed before Listing 12.03 was amended, Plaintiff asserts that the changes made to the listing were intended to be applied retroactively. Because of the retroactive effect of the changes, Plaintiff claims that the ALJ should have applied the amended version of Listing 12.03 during the hearing, held on December 6, 2001, and in the Decision of the ALJ, issued on February 22, 2002. Plaintiff asserts that because the ALJ failed to evaluate his claim pursuant to the amended version of Listing

12.03(C), the judgment of this Court should be altered and the case remanded to the ALJ for proper determination under the applicable standard.

**B. Defendant's Contentions**

Defendant does not dispute Plaintiff's claim that the amended version of Listing 12.03(C) should have been applied in making the determination that Plaintiff is "not disabled" within the meaning of the Social Security Act. However, Defendant contends that the ALJ did in fact apply the amended version of Listing 12.03(C). Defendant asserts that the ALJ not only applied the amended listing, but explained his findings in such a way that would allow for meaningful judicial review. Lastly, Plaintiff claims that the ALJ's findings with respect to Listing 12.03(C) were based upon substantial evidence.

**IV. Discussion**

The earlier version of Listing 12.03(C), effective at the time Plaintiff filed his original claim, lists the criteria for disability as follows:

Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in A and B of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

(1) Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or

(2) Documented current history of two or more years of inability to function outside of a highly supportive living situation.

20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.03(C) (April 1, 2000). The amended Listing 12.03(C), which Plaintiff and Defendant agree should have been retroactively applied during the administrative hearing and in the ALJ's findings, reads as follows:

Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

(1) Repeated episodes of decompensation, each of extended duration; or

(2) A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

(3) Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.03(C) (2004). The Court observes three significant differences between the two versions of Listing 12.03(C). First, the amended version of 12.03(C)(1) appears to encompass a broader range of limitations than the lengthier and more specific language of the earlier version of 12.03(C)(1). Second, the language in subpart 12.03(C)(2) of the amended listing simply did not exist in the earlier version of the regulation. And third, the durational requirements in the amended subpart 12.03(C)(3) are substantively different from the durational requirements of the analogous subpart in the earlier version of the listing. See supra.

It is plainly evident that this Court's earlier decision, affirming the findings of the ALJ, relied on the earlier, unamended version of Listing 12.03(C).<sup>1</sup> See 2004 WL 2102008, \*8 (E.D. Pa. Aug. 26, 2004) (quoting language from the earlier version of Listing 12.03(C)). In light of this fact, two questions are now presented. First, did the ALJ apply the proper version of Listing

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<sup>1</sup> This Court has also reviewed the Report and Recommendation of the Magistrate Judge (Doc. No. 13) and it is not clear from that document which version of Listing 12.03 was relied upon in arriving at the conclusions contained therein.

12.03? Second, if the amended Listing were to be properly applied, does substantial evidence support the ALJ's finding that Plaintiff is "not disabled" within the meaning of the Act? As discussed below, the Court concludes that it is not clear whether or not the amended regulation was properly applied. Therefore, it is not necessary or feasible at this time for the Court to address the latter question posed above.

The ALJ thoroughly reviewed the evidence relating to Plaintiff's medical history. See R. at 20-23. After reviewing this evidence, the ALJ addressed at length Plaintiff's contention that his impairment met the "B" criteria<sup>2</sup> of Listing 12.03. The ALJ concluded that:

[Plaintiff] has "mild" restriction of activities of daily living, "moderate" difficulties in maintaining social functioning, "moderate" difficulties in maintaining concentration, persistence or pace, and has experienced "one or two" episodes of decompensation. The evidence does not establish the presence of the "C" criteria.

(R. at 23). The ALJ's conclusion regarding the "C" criteria was not followed by any additional analysis of the regulation or discussion of facts pertaining specifically to the "C" criteria.

Moreover, the above-quoted findings of the ALJ clearly relate solely to the "B" criteria. Indeed, each finding appears to correspond each of subsections contained in Listing 12.03(B). See supra, note 2.

In this Court's prior opinion affirming the decision of the ALJ, the Court thoroughly reviewed the record de novo and concluded that substantial evidence supported the ALJ's

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<sup>2</sup> Listing 12.03(B)—the amended version—reads as follows:

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence or pace; or
4. Repeated episodes of decompensation each of extended duration;

finding that Plaintiff's impairment did not meet the criteria set forth in Listing 12.03(C). In concluding that substantial evidence supported the ALJ's finding, the Court was guided by the specific (unamended) Listing as well as by the extensive record below. The Court now concludes that it is not clear from the decision of the ALJ whether or not the amended Listing was properly applied. The uncertainty regarding which regulation was applied, coupled with the ALJ's unsupplemented and conclusory statement regarding the "C" criteria, place the decision of the ALJ beyond meaningful review by this Court. See Burnett v. Commissioner of Social Security Administration, 220 F.3d 112 (3d Cir. 2000). For these reasons, it is appropriate to remand the case to the Commissioner. On remand, the ALJ shall fully develop the record and explain his findings with respect to the amended Listing 12.03(C).

#### **V. Conclusion**

The Court finds that in affirming the Decision of the ALJ, the Court erroneously applied the superseded version of Listing 12.03. The Court further finds that there are substantial differences between the amended and unamended versions Listing 12.03. Finally, the Court concludes that it is not clear from the report of the ALJ which version of the listing was applied by the ALJ in making his findings. Because it is not clear whether or not the proper regulation was utilized by the ALJ, this Court is unable to meaningfully review the decision of the ALJ or determine if substantial evidence supports that decision. For the foregoing reasons, the case will be remanded to the Commissioner for further inquiry and findings consistent with this Memorandum. Although Plaintiff requests that the remand be accompanied with specific directions, this Court does not dictate the manner in which the Commission acts.

An appropriate Order follows.

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	:	
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner	:	NO. 03-2397
of the Social Security Administration,	:	

**ORDER**

AND NOW, this 27<sup>th</sup> day of April, 2005, upon consideration of Plaintiff's Motion to Alter Judgment (Doc. No. 18), it is hereby ORDERED that the motion is GRANTED, and the Order of this Court of August 26, 2004 is VACATED, and this matter is REMANDED to the Commissioner for further development and/or evaluation of the evidence in accordance with the foregoing Memorandum. This remand is ordered pursuant to the fourth sentence of 42 U.S.C. § 405(g). The Clerk shall mark this case CLOSED.

BY THE COURT:

s/Michael M. Baylson

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Michael M. Baylson, U.S.D.J.